

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

FAO.No. 178 of 2007()

AGAINST THE ORDER DATED 18/06/2007 IN IA 198/2007 IN
OS.235/2007 of SUB COURT, PERUMBAVOOR
.....

: APPELLANT/PETITIONER/PLAINTIFF:

ASOK KUMAR, S/O. SOMASEKHARAN,
KRISHNA MANDIRAM, KAKKANAD P.O.,VAZHAKKALA VILLAGE

BY ADV. SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

RESPONDENTS: RESPONDENTS/DEFENDANTS:

-
1. BAVA, S/O. SULAIMAN,
KIZHAKKAN HOUSE, PONJASSERY P.O.,VENGOLA VILLAGE.
 2. AUVVA UMMA, W/O. BAVA,
KIZHAKKAN HOUSE, PONJASSERY P.O.,VENGOLA VILLAGE.
 3. SALIM, S/O. BAVA,
KIZHAKKAN HOUSE, PONJASSERY P.O.,VENGOLA VILLAGE.

BY ADV. G.RAJAGOPAL(CAVEATOR)

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

F.A.(O).NO.178 OF 2007

Dated this the 20th day of July, 2007

JUDGMENT

Kurian Joseph, J.

The appeal is filed against the order dated 18.6.2007 in I.A. No.198/2007 in O.S. No.235/2007 on the file of the Sub Court, Perumbavoor whereby the court below declined to grant an order of temporary injunction. The suit is one for specific performance. After having extensively heard the counsel for the petitioner, this court on 9.7.2007 passed the following order:

“The appellant is the plaintiff in O.S. No.235/2007, a suit for specific performance. The respondents/defendants submit that if the appellant is prepared to deposit the sale consideration within five days, the appellant is even now prepared to execute the sale deed. The balance consideration is Rs.45 lakhs. Counsel for the appellant seeks time. Post on 12.7.2007.”

Thereafter on 12.7.2007 yet another order has been passed which reads as follows:

“On 9.7.2007 this court passed an order recording the submission of the respondents that in case the appellant is prepared to deposit the balance consideration of Rs.45 lakhs within five days, despite

all available defence, the respondents were prepared to execute the sale deed. The learned counsel for the appellant, on instructions, submits that since the balance consideration is Rs.45 lakhs, it requires a month's time. The respondents are not prepared for that since the pleading in this case is that the appellant is always ready and willing to deposit the balance consideration. It is also submitted that the respondents are hence withdrawing their submission that they are prepared to execute the sale deed in case the balance sale consideration is deposited.

Post the appeal for admission on 16.7.2007.”

2. Today, when the matter came up for further hearing on admission it is submitted that this court need not go into the previous contentions raised at the time of admission lest any observation made by this court should affect the outcome of the suit itself. Therefore, it is prayed that the appeal itself may be disposed of directing the court below to expeditiously dispose of the suit. It is also prayed that there may be a clarification to the effect that any of the observations and findings may not affect the final outcome of the suit. We find force in the submissions.

Accordingly, there will be a direction to the court below to dispose of the suit as expeditiously as possible, untrammelled by any of the

observations and findings recorded in the order under appeal.

The appeal is disposed of in the above terms.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/